

803 KAR 25:092. Workers' compensation pharmacy fee schedule.

RELATES TO: KRS Chapter 342

STATUTORY AUTHORITY: KRS 342.020, 342.035, 342.260, 342.735

NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.035 requires the Workers' Compensation Board to periodically promulgate administrative regulations to adopt a schedule of fees for the purpose of ensuring that all fees, charges, and reimbursements under KRS 342.020 shall be fair, current, reasonable and limited to that paid for similar treatment of other patients in the same community. The increased security of payment afforded by the Workers' Compensation Act may be taken into consideration in determining what fees are reasonable. KRS 342.735 requires the board to establish administrative regulations to expedite the payment of medical expense benefits. The function of this administrative regulation is to regulate charges for pharmaceuticals provided pursuant to KRS 342.020, and to expedite the payment of this class of medical expense benefits.

Section 1. Definitions. (1) "Brand name" has the meaning set forth in KRS 217.814(1).

(2) "Equivalent drug product" has the meaning set forth in KRS 217.814(5).

(3) "Generic name" has the meaning set forth in KRS 217.814(2).

(4) "Hospital" has the meaning set forth in 803 KAR 25:091, Section 1(1).

(5) "Practitioner" means any person licensed under the professional laws of Kentucky or any other state to prescribe and administer medicine and drugs.

(6) "Wholesale price" means the average wholesale price charged by wholesalers at a given time.

Section 2. Payment for Pharmaceuticals. (1) An employee entitled to receive pharmaceuticals under KRS 342.020 may request and require that a brand name drug be used in treating the employee. Unless the prescribing practitioner has indicated that an equivalent drug product should not be substituted, an employee who requests a brand name drug shall be responsible for payment of the difference between the equivalent drug product wholesale price of the lowest priced therapeutically equivalent drug the dispensing pharmacist has in stock and the brand name drug wholesale price at the time of dispensing.

(2) Any duly licensed pharmacist dispensing pharmaceuticals pursuant to KRS Chapter 342 shall be entitled to be reimbursed in the amount of the equivalent drug product wholesale price of the lowest priced therapeutically equivalent drug the dispensing pharmacist has in stock, at the time of dispensing, plus a five (5) dollar dispensing fee plus any applicable federal or state tax or assessment.

(3) If an employee's prescription is marked "Do Not Substitute," the dispensing pharmacist shall be entitled to reimbursement in an amount equal to the brand name drug wholesale price, at the time of dispensing, plus a five (5) dollar dispensing fee plus any applicable federal or state tax or assessment.

Section 3. Disputes; Applicability. (1) Any dispute arising under this administrative regulation shall be resolved pursuant to 803 KAR 25:012.

(2) This administrative regulation shall apply to prescriptions dispensed to a workers' compensation patient by a hospital pharmacy if the patient is not otherwise being treated or obtaining medical care from the hospital.

(3) This administrative regulation shall not apply to prescriptions dispensed by a hospital pharmacy, of a hospital regulated pursuant to 803 KAR 25:091, to a workers' compensation patient receiving medical treatment or care from the hospital on an inpatient or outpatient basis.

(4) Any insurance carrier, self-insured employer or group self-insured employer may enter into an agreement with any pharmacy to provide reimbursement at a lower amount than that required in this

administrative regulation.

Section 4. Balance Billing. No pharmacy filling a prescription covered under KRS 342.020 shall knowingly collect, attempt to collect, coerce, or attempt to coerce, directly or indirectly, the payment by a workers' compensation patient of any charge in excess of that permitted under this administrative regulation, except as provided in Section 2(1) of this administrative regulation. This prohibition is applicable to prescriptions filled pursuant to KRS 342.020 and any prescription which is denied or disputed by the medical payment obligor may be billed directly to the party presenting the prescription for filling. (20 Ky.R. 717; 1015; eff. 11-10-1993.)